88- 1709

No. .....

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1988

—o—

RICK DOUGLAS POTTER,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

—o—

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION THREE

—o—

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QUESTION PRESENTED

Does association with a known drug seller, in the absence of any evidence of an exchange of money or things, shortly after he tells an undercover officer he is going to meet his source of drugs, constitute probable cause to arrest the associating person?

TABLE OF CONTENTS

Page

Question Presented i

Opinions Below 1

Jurisdiction 2

Constitutional and Statutory Provisions Involved 2

How the Federal Question Was Raised and Decided Below 2

Reasons for Granting the Writ 7

THE ARREST AND SEARCH OF PETITIONER WAS ILLEGAL BECAUSE IT WAS BASED ON THE ARRESTING OFFICER'S INCHOATE SUSPICION AND PETITIONER'S INNOCENT APPEARING ASSOCIATION WITH A KNOWN DRUG SELLER 8

Conclusion 16

Appendices:

A. Constitutional Provisions

Amendment IV ..... App. 1

Amendment XIV, Section 1 ..... App. 1

B. Statutory Provisions

California Penal Code, Section 1538.5, Subd. (a) ..... App. 1

C. Opinion of the California Court of Appeal, Fourth Appellate District, Division Three ..... App. 3

D. Order of the California Supreme Court, Denying Review ..... App. 9

TABLE OF AUTHORITIES

Cases	Page
Beck v. Ohio, 379 U.S. 89 (1964)	15
Brinegar v. United States, 338 U.S. 160 (1949)	12
Krauss v. County of Pierce, 793 F.2d 1105 (9th Cir. 1986)	10
Moore v. State, 441 So.2d 1003 (Ala.Cr.App. 1983)	6
People v. Chase, 675 P.2d 315 (Colo. 1984)	6
Sibron v. New York, 392 U.S. 40 (1968)	5, 8, 10, 11, 13, 14, 15
State v. Mena, 399 So.2d 149 (La. 1981)	6
United States v. Chadwick, 532 F.2d 773 (1st Cir. 1976), cert. gtd. 433 U.S. 1	9
United States v. Chadwick, 433 U.S. 1 (1977)	9
United States v. Davis, 458 F.2d 819 (D.C.Cir. 1972)	8
United States v. De Ri, 332 U.S. 581 (1948)	5, 13
United States v. Olivares, 496 F.2d 657 (5th Cir. 1974)	10
United States ex rel. McArthur v. Rundle, 402 F.2d 701 (3rd Cir. 1968)	10
United States v. Hansen, 652 F.2d 1374 (10th Cir. 1981)	10
United States v. Gates, 462 U.S. 213 (1983)	9
United States v. Jit Sun Loo, 478 F.2d 401 (9th Cir. 1973)	10, 11, 12
United States v. Sokolow, — U.S. —, 57 U.S.L.W. 4401 (Dec. April 3, 1989)	9, 12, 13
Wong Sun v. United States, 371 U.S. 471 (1963)	10, 12
Ybarra v. Illinois, 444 U.S. 85 (1979)	9, 13

TABLE OF AUTHORITIES—Continued

STATUTES	Page
California Penal Code, Section 1538.5, Subdivision (a)	3
28 U.S.C. Section 1257(3)	2
CONSTITUTIONAL PROVISIONS	
Fourteenth Amendment, Section 1	2
Fourth Amendment	2, 3, 7

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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FOURTH APPELLATE DISTRICT, DIVISION THREE

—o—

Petitioner, Rick Douglas Potter, respectfully prays that a writ of certiorari issue to review the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Three, affirming his judgment of conviction.

—o—

OPINION BELOW

The opinion of the California Court of Appeal, Fourth Appellate District, Division Three is an unreported de-

cision, and is reproduced in the Appendix at App. 3-App. 8. The unreported order of the California Supreme Court denying the Petition for Review appears at App. 9.[1]

———o———

JURISDICTION

Jurisdiction of the Court is invoked pursuant to 28 U.S.C. Sec. 1257(3). The judgment of the California Court of Appeal was rendered on November 23, 1988, affirming petitioner's conviction of narcotics violations. A petition for review in the California Supreme Court was timely filed and was denied on February 15, 1989.

———o———

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth and Fourteenth Amendment, Section 1 to the United States Constitution and Section 1538.5, Subdivision (a) of the California Penal Code are set forth in full in the Appendix at App. 1-App. 2.

———o———

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW

On February 3, 1986, Petitioner was charged in the Orange County, California Superior Court by Information number C-59036 with conspiracy to sell or furnish co-

[1]In the proceeding below Rick Douglas Potter, petitioner herein, appeared as defendant and appellant; the People of the State of California appeared as plaintiff and respondent.

caine, sale or transportation of cocaine, and possession of cocaine for sale.

On May 19, 1986 Petitioner brought a motion to suppress evidence under California Penal Code Section 1538.5 (App. 1-App. 2) upon the ground that it was obtained in violation of, *inter alia,* the Fourth Amendment to the United States Constitution.

Evidence on the motion to suppress disclosed that City of Costa Mesa police officers were conducting a narcotics investigation of sales from a residence on Monte Vista by Terry White and Scherrie Basey. An undercover police officer purchased a small amount of cocaine from Terry White. The next day he asked White to sell him more. White said he was going to meet his connection, but would have to beep him first. White later called the officer and arranged to sell him four to five ounces of cocaine. His statement to Officer Curtis on the phone at around 4:00 p.m. on August 8th was that he was going to meet his connection "to pick up another one" (referring to "another batch" of cocaine).

Surveillance officers then followed White to the Backbay High School campus, where he met Petitioner POTTER who was seated in a green Mercedes, however, they saw no exchange. What they saw was no more than a conversation. It is pure speculation what White and Petitioner may have been discussing or if indeed it had any relationship whatsoever to White's cocaine sales. Officers later observed that Petitioner wore a paging beeper. There was no evidence presented on the motion as to White's subsequent movements and the evidence strongly suggests that he did not have any "new batch"

of cocaine shortly after meeting Petitioner at the school. White called the officer back later to say the cocaine was nearby. In that phone call White told Officer Curtis that there was no significant quantity of cocaine present at his home.

The officer then met White at his home, where he heard him tell a caller that he would meet him (the caller) as soon as he could verify that the buyer had the money. The officer showed White some money and White left the house on his motorcycle and returned with a six pack of beer and a quantity of cocaine.

The second purported connection between Petitioner and White was even less probative of his possible involvement with White or his potential connection to the cocaine sales being investigated, than the first meeting.

Police officers followed White again on the trip which yielded the beer and cocaine. On this second trip, White went to a nearby shopping center. The officers lost sight of White several times. They saw White parking his motorcycle in the parking lot of the Backbay shopping center and entering a liquor store. Petitioner was also parked in the parking lot in the same Mercedes. Both men lived in the general area. The officers never saw White's motorcycle near the Mercedes in the Backbay shopping center parking lot, never saw White contact Petitioner at that time, and although they saw the motorcycle driver (White) return to the residence, they did not observe him to receive anything from Petitioner or the Mercedes or the vicinity of the Backbay parking lot.[2]

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[2]Other than the beer, which it is reasonable to conclude he purchased at the liquor store he was seen walking out from when he got onto his motorcycle and drove home.

The sole factor, in addition to Petitioner's association with White, that was relied on by the state is the existence of a beeper in Petitioner's possession on the evening of August 8th.

Officers never saw White contact Petitioner at all on the trip when White returned with the contraband, and never (on either occasion) observed Petitioner engage in any illegal activity.

After White's arrest, Petitioner was arrested and his car was searched, revealing a paging receiver, eight paper bindles of cocaine, and evidence of a four ounce cocaine sale. The evidence thus seized was critical to Petitioner's conviction.

The motion to suppress evidence was denied on June 6, 1986.

After a jury trial, on August 22, 1986 Petitioner was convicted of the three counts charged. He was sentenced on December 12, 1986.

Petitioner appealed to the California Court of Appeal, Fourth Appellate District, Division Three. Petitioner argued that the trial Court's denial of his motion to suppress the evidence obtained during his warrantless search and arrest violated the Fourth Amendment protection against unreasonable searches and seizures as construed by this Court in *Sibron v. New York*, 392 U.S. 40 (1968), and *United States v. De Ri*, 332 U.S. 581 (1948), because Petitioner was arrested and searched primarily based upon his association with a drug user/seller with whom he met, but with whom he was not seen to exchange anything.

The Court of Appeal responded by saying that it "matters not" that no transaction took place when the two met "even though White [the drug seller] said he was going 'to pick up another one'" and by pointing out that White said his connection had a beeper, and that Petitioner also had a beeper. The Court of Appeal then pointed out that when White later retrieved four ounces of cocaine, "[a]lthough the officers observed no actual contact between the men, the circumstances *did not contradict* the likelihood a meeting took place." (App. 6)

Citing three foreign state court decisions relating to dissimilar facts,[3] the Court concluded: "While it is possible Potter was not White's supplier, . . . we find the sum total of this evidence provided ample probable cause to arrest Potter." (App. 7)

The Court concluded that Petitioner did more than merely associate with White:

> "He met with him when White said he was to meet with his connection. He also wore a beeper, as White said the source did. Potter was then seen at the location where White *apparently* picked up the contraband after announcing he was on his way to obtain it." (App. 7) [emphasis added].

The Court did not address Petitioner's contention that since the police observation of White on the trip after that announcement was not continuous, and since he stopped to purchase beer at a store near where Petitioner was seen, it was not at all "apparent" that he picked up the contra-

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[3] *People v. Chase*, 675 P.2d 315 (Colo. 1984); *State v. Mena*, 399 So.2d 149 (La. 1981) and *Moore v. State*, 441 So.2d 1003, 1006 (Ala.Cr.App. 1983).

band at that location or anywhere near the place Petitioner was seen.

On November 23, 1988, the California Court of Appeal affirmed Petitioner's conviction and ruled that the evidence was obtained lawfully under the Fourth Amendment.

On February 15, 1989, the California Supreme Court denied Petitioner's Petition for Review.

———o———

REASONS FOR GRANTING THE WRIT

Petitioner urges this Court to grant certiorari: (1) in order to settle the question presented by the facts of this case which has, apparently never been addressed by this Court; (2) in order to give guidance to intermediate appellate Courts and trial Courts in deciding probable cause and reasonable suspicion cases involving "guilt by association" situations, and finally, (3) in order to correct the violation of the Fourth Amendment which led to the arrest, search and conviction of Petitioner in this case.

The warrantless search and arrest in this case was based upon officers' suspicion of Petitioner born of a "guilt by association" mentality which is repugnant to the fundamental values embodied in the Bill of Rights.

Certiorari should be granted here because the Fourth Amendment requirement of probable cause is not satisfied by "mere suspicion" and such suspicion is not elevated to the level of probable cause by innocent appearing "association" with or "propinquity" to known criminals.

THE ARREST AND SEARCH OF PETITIONER WAS ILLEGAL BECAUSE IT WAS BASED ON THE ARRESTING OFFICER'S INCHOATE SUSPICION AND PETITIONER'S INNOCENT APPEARING ASSOCIATION WITH A KNOWN DRUG SELLER

In the opinion below, the Court of Appeal said:

> "Neither party cites any compellingly analogous case law, which serves to remind that precedent is often of little value in reviewing the question of probable cause." [citing *United States v. Davis*, 458 F.2d 819, 821 (D.C.Cir. 1972)] (App. 5)

Petitioner respectfully disagrees. In *Sibron v. New York*, *supra*, 392 U.S. 40, 62 this Court held:

> ". . . The officer was not acquainted with Sibron and had no information concerning him. He merely saw him talking to a number of known narcotic addicts over a period of eight hours. It must be emphasized that Patrolman Martin was completely ignorant regarding the contents of these conversations *and that he saw nothing pass between Sibron and the addicts.* . . . The inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support intrusion by the police upon an individual's personal security. Nothing resembling probable cause existed until after the search had turned up the envelopes of heroin." *Sibron v. New York*, *supra*, 392 U.S. 40, 62-63 [emphasis added].

In the present case, the police saw Petitioner with White (an established drug seller) twice on the same day. On the first occasion, the officers saw that nothing was exchanged between Petitioner and White, and saw nothing illegal occur (as in *Sibron*). On the second occasion, although it was the trip when White obtained the drugs he

was to sell, the surveilling officers never even saw Petitioner and White together, and produced *no evidence* that Petitioner was the source of the drugs to justify his arrest and search.

Petitioner is aware of no "association" decisions of this Court which have upheld a finding of probable cause based upon the meager justification offered in this case.

For example, in *Ybarra v. Illinois,* 444 U.S. 85, 91 (1979) it was held:

> ". . . [A] person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person."

In *United States v. Chadwick,* 433 U.S. 1 (1978) this Court left undisturbed the Circuit Court's finding that Chadwick's arrest was illegal, notwithstanding his association with others lawfully arrested and his propinquity to a chest for which there was probable cause to search. (Please see *United States v. Chadwick,* 532 F.2d 773, 784-785 (1st Cir. 1976), cert. gdt. 433 U.S. 1.

Nevertheless, there is a growing trend among lower courts to ignore older specific holdings of this court condemning Fourth Amendment intrusions on particular facts. Instead, intermediate appellate courts, and police officers in the field rely upon the general proclamations of this Court that probable cause stands or falls upon the "degree of suspicion that attaches to particular types of noncriminal acts."[4] While it may be true that the "degree of

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[4]*United States v. Sokolow,* — U.S. —, 57 U.S.L.W. 4401 (Dec. April 3, 1989), quoting from *United States v. Gates,* 462 U.S. 213, 243-244.

suspicion'' is the touchstone of probable cause, it must also be true that for an arrest or search to be justified, the officer's suspicion must be reasonably based upon actual facts observed or reasonable inferences from observed facts. ''Mere suspicion'' is insufficient. If it were, ''law-abiding citizens'' would be left to the ''mercy of the officer's [or the trial and appellate court's] whim or caprice.'' (*Wong Sun v. United States,* 371 U.S. 471, 479 (1963).

Following *Sibron, supra,* numerous appellate Courts have held that a suspect's association with known drug traffickers was insufficient to justify an arrest or search, and that mere suspicion was insufficient to convert that association into probable cause. (Please see e.g. *United States v. Hansen,* 652 F.2d 1374, 1390 (10th Cir. 1981) [traveling with known drug dealers who were themselves subject to arrest, insufficient to justify arrest]; *United States v. Jit Sun Loo,* 478 F.2d 401, 405-406 (9th Cir. 1973) [evidence that suspects were in some way connected with importation of heroin held insufficient to arrest and search]; *Krauss v. County of Pierce,* 793 F.2d 1105, 1109 (9th Cir. 1986) [citing *Jit Sun Loo* with approval.]; *United States ex rel. McArthur v. Rundle,* 402 F.2d 701 (3rd Cir. 1968).

Similarly, in *United States v. Olivares,* 496 F.2d 657, 660 (5th Cir. 1974) the Circuit Court held that circumstances far more suspicious than those in the present case were insufficient to arrest or search. There, officers observed a van, riding low, driving away from a nearby border with out-of-state license plates at 4:15 a.m. with its rear windows blocked out in an area with a high incidence

of marijuana and alien smuggling. Noting that the circumstances were suspicious the Court held them insufficient to establish probable cause.

Finally, in *United States v. Jit Sun Loo, supra,* 478 F.2d 401, the Ninth Circuit Court of Appeals considered a factual situation very similar to this present case. There, drug sellers of Malaysian extraction were arrested at the Honolulu airport with 17.5 pounds of heroin. They admitted that they were traveling to meet one or more persons in San Francisco. In San Francisco, agents watched the flight the arrestees would have been on to see who met it. Two men of Malaysian extraction were present but did not meet anyone. They waited until the plane was empty, and then went to the baggage area. Eventually, after all the baggage was claimed, they left and went to a hotel. The hotel staff told the agents the two men had checked in two days before and were scheduled to check out on the day the arrested Malaysians were set to arrive in San Francisco. The next day, the two men went to the airport and were watching the incoming overseas flights. Agents placed the three Honolulu defendants on a flight to San Francisco. When they arrived, they went to a couch in the baggage area. The two men went to the baggage area and eventually, the only people in that area were the agents, the three Honolulu defendants and the two men. They made no contact with the three Honolulu defendants, but returned to their hotel rooms. There they were arrested without a warrant. The Court of Appeals held the arrest was unlawful, relying, in part, upon *Sibron, supra.* The Court said:

> "The circumstances of this case could raise a suspicion in the minds of the customs agents that appellants [the two men] had or were about to have some connection with the Honolulu defendants, but it is axiomatic that mere suspicion will not justify an arrest without a warrant. . . . The only information the agents had was that the Honolulu defendants were going to be met in San Francisco. They did not have a description of the person or persons, they did not know the name or names, and they did not know why such persons might be meeting the Honolulu defendants. Because of the activities of these appellants, the most that the agents had was a suspicion that they were in some way connected with the importation of heroin." *United States v. Jit Sun Loo, supra,* 478 F.2d 401, 405.

Nevertheless, this Court's recent decision in *United States v. Sokolow, supra,* calls the continued validity of *Sibron,* and its lower court progeny into serious question. Those questions are serious because they threaten a "relaxation of the fundamental requirements of probable cause" (*Wong Sun v. United States, supra,* 371 U.S. at 479), and because they threaten to sanction a violation of law abiding citizen's personal security based upon a guilt by association mentality.

The evidence, in the present case, fell far short of probable cause to arrest. In fact the evidence here would have presented a close case if the issue had been reasonable suspicion to detain. Yet, the Court of Appeal upheld the search here by referring to the concept of probable cause as a "plastic concept" (App. 5) and by concluding that the precedents (cited by Petitioner) were "of little value." (App. 5). Finally, relying upon this Court's decision rendered 50 years ago in *Brinegar v. United States,*

338 U.S. 160, 175 (1949) the Court of Appeal emphasized that in determining probable cause, "we deal with probabilities" which are "not technical." All of this reasoning permitted the Court of Appeal to, essentially, disregard *Sibron v. New York, supra,* in reaching its decision[5] that "the sum total of . . . evidence provided ample probable cause to arrest Potter." (App. 7).[6]

The decisions in *Sibron, supra,* and *Ybarra, supra,* speak out clearly against *guilt by association* as repugnant to the Fourth Amendment proscription against unreasonable searches and seizures. By condemning searches in those cases, which were predicated primarily upon the association of the person searched with a person known to be involved in narcotics[7] or a place admittedly subject to search,[8] this Court established the principle that substantially more than association is required.

Under the reasoning of the Court of Appeal, and under some interpretations of recent decisions of this Court, such as *Sokolow, supra,* a citizen is at peril of detention or arrest based primarily upon his association with another, even where there is no evidence that he is aware

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[5]While the Court below correctly stated that Petitioner "argue[d] his association with Terry White on August 8 was insufficient to supply probable cause to arrest him" (App. 5), the Court never acknowledged that Petitioner cited *Sibron,* and never dealt with the similarities of that factual situation to the present case.

[6]The court did acknowledge Petitioner's citation to *United States v. Di Re, supra,* 332 U.S. 581, but did not discuss the comparable facts in any detail.

[7]*Sibron, supra.*

[8]In *Ybarra, supra,* the person searched was in a bar for which the searching officers possessed a search warrant.

of that other person's actions or words which make the association suspicious. Here, the state, and the Court of Appeal relied upon the fact that Petitioner has a beeper, and White used a beeper to contact his source to buttress the use of Petitioner's meeting with White and later proximity to White to justify his arrest. But while emphasizing White's statements that he contacted his source with a beeper and that he was going to pick up the contraband prior to meeting Petitioner, the court below seemed to ignore the fact that here, as in *Sibron,* there was no evidence that anything was exchanged between White and Petitioner, there was no proof that the conversation they had related to anything improper, and there was no evidence that they even met or saw each other later in the parking lot, when Petitioner was actually arrested. This second "near-meeting" is critical here, because it was after White's second trip out of the house that he came back with the contraband, but on that trip there was no evidence that he either spoke to or saw Petitioner, who simply happened to be parked in a parking lot near several stores, one of which White stopped at to purchase beer. Language in the opinion of the Court of Appeal appears to place the burden of dispelling possible suspicious interpretations of association upon the arrestee. ("[T]he circumstances did not contradict the likelihood a meeting took place." [App. 6].) But neither the People, nor the Court below ever explained why it was likely that a meeting took place. Rather, the suspicion that Petitioner was the connection was used to establish that likelihood, and then that likelihood was used to arrest, apparently *because* the circumstances did not affirmatively prove that his association on the first occasion, and his propin-

quity to White on the later occasion were in fact innocent. By selectively emphasizing parts of what White did and said, and ignoring those parts that tended to negate suspicion of Petitioner, the rule that seems to emerge from the state court's treatment of this case is: where association with a known or reasonably suspected criminal is suspicious, that suspicious association justifies a search and arrest.

The reasoning of the Court of Appeal in the instant case suggests that it has come to regard mere suspicion as enough to justify a warrantless arrest and search, and this Court's recent decisions might be read to support this reasoning.

Certiorari should be granted in this case: to re-establish the validity of this Court's specific holdings that neither "association" with nor "propinquity" to persons independently suspected will justify a warrantless search or arrest;[9] to safeguard against an erosion of the Fourth Amendment requirement of objective reasonableness (*Beck v. Ohio*, 379 U.S. 89, 91 (1964)) and finally to correct the manifest violation of Petitioner's fundamental right to be free from unreasonable searches and seizures in the present case.

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[9]In *Sibron*, this Court said: suspicious association with known drug users is "nothing resembling probable cause" (*Sibron*, 392 U.S. 40, 63)

CONCLUSION

Petitioner respectfully requests this Court to reaffirm the right of citizens to associate with one another free from fear of warrantless arrest or search at the hands of police officers who harbor no more than suspicions and inchoate hunches, and to rule that Petitioner was convicted by means of evidence obtained in violation of his Fourth Amendment right to be free of such illegal police conduct.

WHEREFORE, for these various reasons, Petitioner prays that this Honorable Court grant his petition and issue its Writ of Certiorari.

Respectfully submitted this 13th day of April, 1989.

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APPENDIX

CONSTITUTIONAL PROVISIONS

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment XIV, Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS

California Penal Code, Section 1538.5, Subdivision (a)

(a) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(1) The search or seizure without a warrant was unreasonable.

(2) The search or seizure with a warrant was unreasonable because (i) the warrant is insufficient on

its face; (ii) the property or evidence obtained is not that described in the warrant; (iii) there was not probable cause for the issuance of the warrant; (iv) the method of execution of the warrant violated federal or state constitutional standards; (v) there was any other violation of federal or state constitutional standards.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS
IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	G004943
Plaintiff and Respondent,	)	(Super. Ct. No. C-59036)
v.	)	OPINION
RICK DOUGLAS POTTER,	)	
Defendant and Appellant.	)	(Filed November 23, 1988)

Appeal from a judgment of the Superior Court of Orange County, Linda H. McLaughlin and James R. Franks II, Judges. Affirmed.

William J. Kopeny, for Defendant and Appellant.

John K. Van de Kamp, Attorney General, Steve White, Chief Assistant Attorney General, Rudolf Corona, Jr. and Yvonne H. Behart, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury convicted Rick Potter of narcotics offenses. He contends he was arrested without probable cause and incriminating evidence was illegally seized. We disagree and affirm.

I

A confidential informant introduced undercover officer Tom Curtis to Terry White, who sold the officer a

gram of cocaine on August 7, 1985. The next day Curtis telephoned White's home to purchase more. White said he was going to meet his connection, but would have to "beep" him first and could call back after the meeting. White returned the call about an hour later and told Curtis the connection had four, and maybe five, ounces to sell at $1,850 per ounce. Curtis agreed to buy, and White said he would let his connection know by beeping him again. White telephoned Curtis within two hours and announced the narcotics were nearby.

Curtis went to White's house. The phone rang, and White told the caller he would join him at the meeting place as soon as the purchaser demonstrated his ability to buy the drugs. Curtis showed White $10,000 in cash in his car trunk. White drove off on a motorcycle and returned 16 minutes later with a six-pack of beer and a manila envelope containing cocaine. Curtis signaled fellow officers stationed nearby, and White and his girlfriend were arrested.

Police officers surreptitiously followed White on both trips. The first time, Officer Thomas Boylan trailed White from his home to a nearby parking lot. He observed White talking to a man in a green Mercedes with personalized plates. Boylan followed the automobile after the encounter. When the driver, Potter, parked and left the car, Boylan saw a paging receiver on his belt.

Officers also followed White when he left Curtis to pick up the cocaine. This time he went to a neighboring shopping center. From a police helicopter, White was seen parking his motorcycle and entering a liquor store; the observer lost sight of the suspect several times, however,

because the helicopter was circling. Boylan, surveilling from the ground, saw the same green Mercedes parked in front of the liquor store. Potter, the sole occupant, was waiting in the car.

After White's arrest, Boylan returned to the shopping center and followed Potter. A uniformed officer was called to detain the Mercedes, and Potter was arrested. A subsequent search of the automobile led to the seizure of a paging receiver, handwritten notes evidencing a four-ounce sale of cocaine, pay-owe sheets, a scale, and eight paper bindles of cocaine. Potter sought to suppress all of those items as well as fingerprints taken after his arrest.

II

Potter argues his association with Terry White on August 8 was insufficient to supply probable cause to arrest him. The Attorney General emphasizes the reliability of White's information, as corroborated by the police surveillance. Neither party cites any compelling analogous case law, which serves to remind that precedent is often of little value in reviewing the question of probable cause: "It is 'a plastic concept whose existence depends on the facts and circumstances of the particular case.' [Citations.] Because of the kaleidoscopic myriad that goes into the probable cause mix 'seldom does a decision in one case handily dispose of the next.' [Citation.]" (*United States v. Davis* (D.C.Cir. 1972) 458 F.2d 819, 821.)

Probable cause exists where "the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in

the belief that" an offense has been or is being committed. (*Carroll v. United States* (1925) 267 U.S. 132, 162.) When "dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." (*Brinegar v. United States* (1949) 338 U.S. 160, 175.)

The facts supporting probable cause to arrest Potter were these: He was seen with White near the latter's home after White announced he was going to meet his supplier. It matters not that a transaction may not have occurred at that time, even though White said he was going "to pick up another one." It is more appropriate to note that White drove a circuitous route to the meeting, which took place in an empty parking lot, ostensibly without anyone else nearby. White said he contacted his connection by beeping him, and Potter wore a beeper. When White later retrieved four ounces of cocaine to consummate the sale, he went to a different parking lot; and Potter was there, too. Although the officers observed no actual contact between the men, the circumstances did not contradict the likelihood a meeting took place. It was quite probable that White met with Potter to pick up the cocaine, just as he had met with him before, after reporting he was going to meet his connection.

Where surveilling officers follow a seller to his reported connection's house, there is generally probable cause to believe contraband will be found at that location. (See, e.g., *People v. Chase* (Colo. 1984) 675 P.2d 315; *State v. Mena* (La. 1981) 399 So.2d 149.) Similarly, when White said he was going to contact his source by use of a beeper

and then met a lone man wearing a beeper, it was likely *that* man was his supplier. That probability increased when White reported he would meet again with the same man and the waiting Potter was again seen in close proximity to White. When White in fact returned with the narcotics, as he said he would, Potter's involvement became highly probable. While it is possible Potter was not White's supplier, "this *possibility* does not negate the *probability,* as found by the [lower] court . . . ." (*Moore v. State* (Ala.Cr.App. 1983) 441 So.2d 1003, 1006.)

Potter argues White's failure to name his connection negates a finding of probable cause because mere presence or association with a known drug dealer is insufficient cause to arrest. (See *United States v. Di Re* (1948) 332 U.S. 581.) But Potter did more than merely associate with White: He met him when White said he was to meet with his connection. He also wore a beeper, as White said the source did. Potter was then seen at the location where White apparently picked up the contraband after announcing he was on his way to obtain it. We find the sum total of this evidence provided ample probable cause to arrest Potter.

Judgment affirmed.

Crosby, J.

WE CONCUR:

Sonenshine, Acting P.J.

Wallin, J.

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL

4th District, Division 3, No. G004943

S008421

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

IN BANK

PEOPLE

v.

RICK POTTER

(Filed Feb. 15, 1989)

Appellant's petition for review DENIED.

LUCAS
Chief Justice